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HOUSE BILL 2606

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State of Washington

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2002 Regular Session

By Representatives Haigh, Rockefeller and Eickmeyer

Read first time 01/22/2002. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to eliminating certain restrictions on water system  
2 interties; and amending RCW 90.03.383.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read  
5 as follows:

6 (1) The legislature recognizes the value of interties for improving  
7 the reliability of public water systems, enhancing their management,  
8 and more efficiently utilizing the increasingly limited resource.  
9 Given the continued growth in the most populous areas of the state, the  
10 increased complexity of public water supply management, and the trend  
11 toward regional planning and regional solutions to resource issues,  
12 interconnections of public water systems through interties provide a  
13 valuable tool to ensure reliable public water supplies for the citizens  
14 of the state. Public water systems have been encouraged in the past to  
15 utilize interties to achieve public health and resource management  
16 objectives. The legislature finds that it is in the public interest to  
17 recognize interties existing and in use as of January 1, 1991, and to  
18 have associated water rights modified by the department of ecology to  
19 reflect current use of water through those interties, pursuant to

1 subsection (3) of this section. The legislature further finds it in  
2 the public interest to develop a coordinated process to review  
3 proposals for interties commencing use after January 1, 1991.

4 (2) For the purposes of this section, the following definitions  
5 shall apply:

6 (a) "Interties" are interconnections between public water systems  
7 permitting exchange, acquisition, or delivery of water between those  
8 systems for other than emergency supply purposes, where such exchange  
9 or delivery is within established instantaneous and annual withdrawal  
10 rates specified in the systems' existing water right permits or  
11 certificates, or contained in claims filed pursuant to chapter 90.14  
12 RCW, and which results in better management of public water supply  
13 consistent with existing rights and obligations. Interties include  
14 interconnections between public water systems permitting exchange,  
15 acquisition, or delivery of water to serve as primary or secondary  
16 sources of supply, (~~but do not include development of new sources of~~  
17 ~~supply to meet future demand~~) and may include use of inchoate amounts  
18 of water from existing sources of supply.

19 (b) "Service area" is the area designated in a water system plan or  
20 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW  
21 respectively. When a public water system does not have a designated  
22 service area subject to the approval process of those chapters, the  
23 service area shall be the designated place of use contained in the  
24 water right permit or certificate, or contained in the claim filed  
25 pursuant to chapter 90.14 RCW.

26 (3) Public water systems with interties existing and in use as of  
27 January 1, 1991, or that have received written approval from the  
28 department of health prior to that date, shall file written notice of  
29 those interties with the department of health and the department of  
30 ecology. The notice may be incorporated into the public water system's  
31 five-year update of its water system plan, but shall be filed no later  
32 than June 30, 1996. The notice shall identify the location of the  
33 intertie; the dates of its first use; the purpose, capacity, and  
34 current use; the intertie agreement of the parties and the service  
35 areas assigned; and other information reasonably necessary to modify  
36 the water right permit. Notwithstanding the provisions of RCW  
37 90.03.380 and 90.44.100, for public water systems with interties  
38 existing and in use as of January 1, 1991, the department of ecology,  
39 upon receipt of notice meeting the requirements of this subsection,

1 shall, as soon as practicable, modify the place of use descriptions in  
2 the water right permits, certificates, or claims to reflect the actual  
3 use through such interties, provided that the place of use is within  
4 service area designations established in a water system plan approved  
5 pursuant to chapter 43.20 RCW, or a coordinated water system plan  
6 approved pursuant to chapter 70.116 RCW, and further provided that the  
7 water used is within the instantaneous and annual withdrawal rates  
8 specified in the water right permit and that no outstanding complaints  
9 of impairment to existing water rights have been filed with the  
10 department of ecology prior to September 1, 1991. Where such  
11 complaints of impairment have been received, the department of ecology  
12 shall make all reasonable efforts to resolve them in a timely manner  
13 through agreement of the parties or through available administrative  
14 remedies.

15 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,  
16 exchange or delivery of water through interties commencing use after  
17 January 1, 1991, shall be permitted when the intertie improves overall  
18 system reliability, enhances the manageability of the systems, provides  
19 opportunities for conjunctive use, or delays or avoids the need to  
20 develop new water sources, and otherwise meets the requirements of this  
21 section, provided that each public water system's water use shall not  
22 exceed the instantaneous or annual withdrawal rate specified in its  
23 water right authorization, shall not adversely affect existing water  
24 rights, and shall not be inconsistent with state-approved plans such as  
25 water system plans or other plans which include specific proposals for  
26 construction of interties. Interties commencing use after January 1,  
27 1991, shall not be inconsistent with regional water resource plans  
28 developed pursuant to chapter 90.54 RCW. This section shall not be  
29 interpreted to preclude the use of an intertie to mitigate adverse  
30 impacts to existing water rights or instream flows.

31 (5) For public water systems subject to the approval process of  
32 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties  
33 commencing use after January 1, 1991, shall be incorporated into water  
34 system plans pursuant to chapter 43.20 RCW or coordinated water system  
35 plans pursuant to chapter 70.116 RCW and submitted to the department of  
36 health and the department of ecology for review and approval as  
37 provided for in subsections (5) through (9) of this section. The plan  
38 shall state how the proposed intertie will improve overall system  
39 reliability, enhance the manageability of the systems, provide

1 opportunities for conjunctive use, or delay or avoid the need to  
2 develop new water sources.

3 (6) The department of health shall be responsible for review and  
4 approval of proposals for new interties. In its review the department  
5 of health shall determine whether the intertie satisfies the criteria  
6 of subsection (4) of this section, with the exception of water rights  
7 considerations, which are the responsibility of the department of  
8 ecology, and shall determine whether the intertie is necessary to  
9 address emergent public health or safety concerns associated with  
10 public water supply.

11 (7) If the intertie is determined by the department of health to be  
12 necessary to address emergent public health or safety concerns  
13 associated with public water supply, the public water system shall  
14 amend its water system plan as required and shall file an application  
15 with the department of ecology to change its existing water right to  
16 reflect the proposed use of the water as described in the approved  
17 water system plan. The department of ecology shall process the  
18 application for change pursuant to RCW 90.03.380 or 90.44.100 as  
19 appropriate, except that, notwithstanding the requirements of those  
20 sections regarding notice and protest periods, applicants shall be  
21 required to publish notice one time, and the comment period shall be  
22 fifteen days from the date of publication of the notice. Within sixty  
23 days of receiving the application, the department of ecology shall  
24 issue findings and advise the department of health if existing water  
25 rights are determined to be adversely affected. If no determination is  
26 provided by the department of ecology within the sixty-day period, the  
27 department of health shall proceed as if existing rights are not  
28 adversely affected by the proposed intertie. The department of ecology  
29 may obtain an extension of the sixty-day period by submitting written  
30 notice to the department of health and to the applicant indicating a  
31 definite date by which its determination will be made. No additional  
32 extensions shall be granted, and in no event shall the total review  
33 period for the department of ecology exceed one hundred eighty days.

34 (8) If the department of health determines the proposed intertie  
35 appears to meet the requirements of subsection (4) of this section but  
36 is not necessary to address emergent public health or safety concerns  
37 associated with public water supply, the department of health shall  
38 instruct the applicant to submit to the department of ecology an  
39 application for change to the underlying water right or claim as

1 necessary to reflect the new place of use. The department of ecology  
2 shall consider the applications pursuant to the provisions of RCW  
3 90.03.380 and 90.44.100 as appropriate. If in its review of proposed  
4 interties and associated water rights the department of ecology  
5 determines that additional information is required to act on the  
6 application, the department may request applicants to provide  
7 information necessary for its decision, consistent with agency rules  
8 and written guidelines. Parties disagreeing with the decision of the  
9 department of ecology on the application for change in place of use may  
10 appeal the decision to the pollution control hearings board.

11 (9) The department of health may approve plans containing intertie  
12 proposals prior to the department of ecology's decision on the water  
13 right application for change in place of use. However, notwithstanding  
14 such approval, construction work on the intertie shall not begin until  
15 the department of ecology issues the appropriate water right document  
16 to the applicant consistent with the approved plan.

17 (10) An intertie installed or commencing after the effective date  
18 of this section that is used to deliver a nonemergency primary supply  
19 of water to a receiving system having fewer than one thousand  
20 connections may not be terminated until the earlier of: The date that  
21 replacement water is available for delivery to or use by the receiving  
22 system, or five years following the date of notice from the delivering  
23 water system that delivery of primary water supply to the receiving  
24 system shall be terminated.

25 (11) Any intertie installed or commencing use specifically in  
26 response to a water emergency declared by the department of health  
27 under chapter 43.70 RCW may be terminated upon cancellation by the  
28 department of health of the emergency declaration.

29 (12) A public water system commencing receipt of a primary supply  
30 of water through an intertie after the effective date of this section  
31 must initiate conservation measures that will result in the receiving  
32 system meeting or exceeding current department of health conservation  
33 guidelines.

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